TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1913.

No. 615.

NEW ORLEANS AND NORTHEASTERN RAILROAD COMPANY AND SOUTHERN RAILWAY COMPANY, PLAINTIFFS IN ERROR,

vs.

NATIONAL RICE MILLING COMPANY.

IN ERROR TO THE SUPREME COURT OF THE STATE OF LOUISIANA.

FILED JUNE 30, 1913.

(22,766)

(25,766)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1913.

No. 615.

NEW ORLEANS AND NORTHEASTERN RAILROAD COMPANY AND SOUTHERN RAILWAY COMPANY, PLAINTIFFS IN ERROR,

vs.

NATIONAL RICE MILLING COMPANY.

IN ERROR TO THE SUPREME COURT OF THE STATE OF LOUISIANA.

INDEX.

	Original.	Print
Transcript from the civil district court for the parish of Orleans	a	1
Docket entries	a	1
Petition	1	2
Bills of lading (2)	4	4
Answer of N. O. & N. E. R. R. Co.	5	4
Answer of Southern Railway Company	5	4
Testimony for plaintiff taken in open court	7	5
Testimony of Asa S. Kennedy	7	5
Exhibits P 1 and P 2—Bills of lading	9	7
Note of evidence for defendants	10	11
Deposition of T. J. Hayhoe	11	11
Commission	11	11
Interrogatories	12	12
Agreement	14	13
Cross-interrogatories	14	14
Answers to interrogatories	16	15
Exhibit No. 1—Blue print	23	18

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., SEPTEMBER 5, 1913.

	Original.	Print
Deposition of Harry L. Thompson and others	24	18
Commission	24	18
Interrogatories to be propounded to H. L. Thompson *et al.*	25	19
Agreement	26	20
Cross-interrogatories to be propounded to H. L. Thompson *et al.*	27	20
Interrogatories to be propounded to J. R. Anderson *et al.*	27	21
Agreement	29	21
Cross-interrogatories to be propounded to J. R. Anderson *et al.*	29	22
Interrogatories to be propounded to C. M. Sykes *et al.*	29	22
Agreement	31	23
Answers of H. L. Thompson	31	23
Henry W. Tyler	35	25
G. A. Benson	37	26
W. H. Dent	41	29
M. J. Marcus	43	30
H. L. Hungerford	46	32
D. W. Newell	50	34
J. R. Anderson	52	36
J. A. McElroy	54	37
L. E. Campbell	56	39
P. C. Martin	59	40
P. J. Pfeiffer	61	42
Granville Beale	64	43
J. C. Parks	66	45
W. R. Parks	69	46
Rough sketch and memorandum of facts by W. R. Parks	73	48
Answers of W. F. Taylor	74	49
J. R. Blackwell	76	50
C. W. Sykes	78	51
J. R. Southall	79	52
C. J. Blount	81	54
Affidavit of S. N. Norris	83	55
Hugh O'Neall	85	56
Judgment	86	57
Motion for a suspensive appeal	87	57
Appeal bond	88	58
Clerk's certificate	89	58
Transcript of appeal filed	90	59
Cause continued (extract from minutes)	90	59
Cause called and continued (extract from minutes)	90	60
Cause called, argued, and submitted (extract from minutes)	91	60
Reargument ordered by the court (extract from minutes)	92	61
Cause called, argued, and submitted (extract from minutes)	92	61
Final judgment (extract from minutes)	93	62
Opinion of the court	94	62
Petition for rehearing	117	76

	Original.	Print
Rehearing granted (extract from minutes)	125	82
Cause called, argued, and submitted (extract from minutes)	125	83
Final judgment on rehearing (extract from minutes)	126	83
Opinion of the court on rehearing	128	84
Dissenting opinion of Mr. Justice Monroe	156	99
Certificate of the clerk of the supreme court	173	108
Certificate of the chief justice of the supreme court as to the signature of the clerk	174	109
Certificate of the clerk of the supreme court as to the certificate of the chief justice	175	109
Petition for writ of error (original)	176	109
Order granting writ of error	178	111
Assignment of errors (original)	179	111
Writ of error (original)	185	115
Bond for writ of error	187	116
Certificate of lodgment	189	118
Return to writ of error	190	118

a STATE OF LOUISIANA,
Parish of Orleans, City of New Orleans:

Civil District Court for the Parish of Orleans.

No. 89927.

Civil District Court, Division "E."

NATIONAL RICE MILLING CO.
vs.
NEW ORLEANS AND NORTHEASTERN R. R. Co. and SOUTHERN RAILWAY.

Detailed List of All Docket Entries, in Chronological Order, from Docket Number Four, in the Above-numbered and Entitled Cause, from the 28th Day of May, 1909 (*the Date of Filing the Original Petition*), *to the 28th Day of November,* 1910 (*the Date of Filing the Appeal Bond*), *Both Inclusive.*

1909.

May 28. Petition and two bills of lading (in vault).
28. Two copies of petition and two citations.
June 8. Answer of N. O. & N. E. R. R. Co.
8. Answer of Southern Railway Co.
9. Return on two citations.
Nov. 30. Issuing two commissions.
Dec. 15. Received depositions.

1910.

Jan. 20. Depositions delivered unopened to Hall & Monroe.
20. Preference.
Feb'y 3. Preference.
11. Received depositions.
15. Depositions delivered to H. H. Hall.
17. Prefeernce.
March 3. Preference for argument.
7. Motion for record (A. A. Moreno).
17. Preference.
30. Note of evidence.
31. Preference.
April 28. *Return* return (A. A. Moreno).
28. Preference.
May 12. Preference.
26. Preference.

b

June 8. Motion for record (A. A. Moreno).
23. Preference.

24. Record return.
Oct. 27. 1 commission. 1 plan annexed.
27. 10 commissions. Note of evidence. 2 affidavits.
27. Note of evidence & duplicate. 2 exhibits.
Nov. 15. Judgment.
21. Judgment signed.
28. Motion and Bond of Appeal.

1	Transcript	$57.00
	Binding	1.00
		$58.00

BARRY.

STATE OF LOUISIANA,
Parish of Orleans, City of New Orleans:

Civil District Court for the Parish of Orleans.

Petition and Two Bills of Lading.

Filed May 28th, 1909.

Civil District Court, Division "E."

No. 89927.

NATIONAL RICE MILLING CO.
vs.
NEW ORLEANS AND NORTHEASTERN R. R. Co. and SOUTHERN RAILWAY.

To the Honorable the Judges of the Civil District Court for the Parish of Orleans, State of Louisiana:

The petition of the National Rice Milling Company, a corporation duly organized under the laws of the State of New Jersey and domiciled in the said State of New Jersey, but doing business in the City of New Orleans, La., herein appearing through Henry Kahn, its President, with due respect, represents:—

2 That the New Orleans & Northeastern Railroad Company, a corporation organized under the laws of the State of Louisiana and domiciled and doing business in the City of New Orleans, and the Southern Railway, a foreign corporation, doing business within the State of Louisiana and having an agent in the City of New Orleans upon whom service of citation can be made, are justly and legally indebted unto your petitioner, jointly and in solido, in the full sum of Two Thousand Four Hundred Eighty-seven Dollars and Fifty Cents ($2,487.50), for this, to-wit:

That on or about August 21st, 1908, your petitioner shipped via. the New Orleans & Northeastern Railroad Company a certain car-

load of rice, to-wit: Three Hundred (300) pockets of clean rice in C. N. O. & T. P. car 15545, consigned to shipper's order, notify Carolina Rice Company, Charleston, S. C., all as will more fully and at large appear by reference to the bill of lading for said car load of rice hereto attached and made a part hereof as Exhibit A, said rice being of the value of $1,050.00; and that on or about August 22nd, 1908, your petitioner shipped via. the New Orleans & Northeastern Railroad Company a certain car load of rice, to-wit: Four hundred (400) pockets of clean rice in A. G. S. car 12406, consigned to shipper's order, notify Fiedman Company, Charleston, S. C., all as will more fully and at large appear by reference to the bill of lading for said car load of rice hereto attached and made a part hereof as Exhibit B, said rice being of the value of $1,437.50.

Now your petitioner avers that the said rice was never delivered at Charleston, S. C., but your petitioner is informed and so alleged that the said two car loads of rice were destroyed at Hamburg, S. C., on or about August 26th, 1908, while in the possession of the Southern Railway, and your petitioner specially avers that the destruction of the said rice was due solely to the negligence, fault
3 and want of care of the said Southern Railway, its agents, servants and employés.

And petitioner further avers that Section 7 of the Act of Congress of June 29th, 1906, amending Section 20 of the Act of Congress of February 4th, 1887, provides:

"That any common carrier, railroad or transportation company receiving property for transportation from a point in one State to a point in another State shall issue a receipt or a bill of lading therefor and shall be liable to the lawful holders thereof for any loss, damage, or injury to such property caused by it, or by any common carrier, railroad, or transportation company to which such property may be delivered or over whose line or lines such property may pass, and no contract, receipt, rule, or regulation shall exempt such common carrier, railroad, or transportation company from the liability hereby imposed, provided that nothing in this section shall deprive any holder or such receipt or bill of lading of any remedy or right of action which he has under existing law."

Petitioner further alleges that the New Orleans & Northeastern Railroad Company is therefore liable to it, jointly and in solido with the Southern Railway for its loss and damage resulting from the destruction of said rice.

Petitioner further alleges that it never parted with its ownership in or title to the said rice; petitioner further alleges amicable demand and failure to pay.

Wherefore, petitioner prays that said defendants may be cited through their proper officers to appear and answer to this demand, and that after trial had there be judgment in favor of your petitoner and against the New Orleans & Northeastern Railroad Company and the Southern Railway, jointly and in solido, for the full sum of $2,487.50, with legal interest from judicial demand.

And petitioner further prays for all costs and for full and general relief.

(Signed) W. CATESBY JONES,
" IRVING R. SAAL,
Attorneys.

4 *Bills of Lading (Two), Annexed to and Made Part of Petition.*

Filed May 28th, 1909.

(Here Follow Bills of Lading, Marked Page 4.)

5 *Answer of the N. O. & N. E. R. R. Company.*

Filed June 8th, 1909.

Civil District Court, Division "E."

No. 89927.

NATIONAL RICE MILLING COMPANY
vs.
NEW ORLEANS & NORTHEASTERN R. R. Co. et als.

And now into Court comes the New Orleans & Northeastern Railroad Company herein represented by its President D. D. Curran, and, for answer to Plaintiff's petition, says that as to this Respondent said petition discloses no cause of action.

Wherefore, Respondent prays that Plaintiff's demand be rejected, that he be condemned to pay the costs thereof; and for all general and equitable relief.

N. O. June 7th, 1909.

(Signed) HALL & MONROE,
Attorneys.

Answer of Southern Railway Company.

Filed June 8th, 1909.

No. 89927.

Civil District Court, Division "E."

NATIONAL RICE MILLING COMPANY
vs.
NEW ORLEANS & NORTHEASTERN RAILROAD Co. et al.

And now into Court comes the Southern Railway Company made defendant herein, represented by its President W. W. Finley and,